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INTERNATIONAL PLATFORM OF JURISTS FOR EAST TIMOR

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PETITION PRESENTED FOR

THE INTERNATIONAL PLATFORM OF JURISTS FOR EAST TIMOR

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TO: THE SPECIAL COMMITTEE ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

27 July 1992

Mr Chairman, I appreciate this opportunity to appear before the Committee on behalf of the International Platform of Jurists for East Timor. I have several times previously addressed this Committee and the Fourth Committee of the General Assembly on the subject of East Timor for the International League for Human Rights. The League, of course, endorses this statement also.

During the consideration of the East Timor item in this Committee last year, Mr Pedro Pinto Leite spoke of the efforts under way to create the Platform of Jurists which, as he put it, "within its specific field, aims to do its part in putting a stop to the foreign occupation of East Timor and to the creation of conditions that allow its people the exercise of the right of self determination."[1] The Platform was duly constituted in a two-day conference held in Lisbon on 9 and 10 November last. That gathering was attended by more than 60 lawyers from 15 countries and all continents. The Platform now has more than 120 members from some 30 countries, most of whom are international law experts - professors and lecturers at law schools or practising attorneys.

As lawyers, we are particularly concerned with the fundamental illegality of Indonesia's presence in East Timor. This presence represents a breach of the principle of self-determination contained in Articles 1 and 55 of the United Nations Charter and its 1960 resolutions on the subject, resolutions 1514 (XV)[2] and

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[1] U.N. Doc. A/AC.109/PV.1384 at 33 (1991).

[2] G.A. Res. 1514 (XV), U.N. GAOR, 15th Sess., Supp. No 16 at 66, U.N. Doc. A/4684 (1960).

1541 (XV).[3] It represents, moreover, a breach of the Charter prohibitions on the use of force, notably Article 2, paragraph 4, and Chapter VII of the Charter, as interpreted in the Assembly's 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States[4] and its 1974 resolution on the Definition of Aggression.[5] Article 2, paragraph 4 provides that "All Members shall refrain in their international relations from the threat or use of force against the teritorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." Indonesia's actions offend against the very core of this basic proscription of the Charter.

Members of the Platform in such countries as Australia, the United States, New Zealand, Canada, France, the United Kingdom, the Netherlands, Finland and Norway have also taken a strong position on the obligations of their governments under international law not to give diplomatic countenance to, or recognize as other than illegal, the situation brought about by Indonesia's occupation. Some aspects of this matter are currently before the International Court of Justice in the proceedings brought against Australia by Portugal concerning what is popularly known as the "Timor-Gap Treaty."

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[3] G.A. Res. 1541 (XV), id., at 29.

[4] G.A. Res. 2625 (XXV), U.N. GAOR, 25th Sess., Supp. No. 28, at 121, U.N. Doc. A/8028 (1970).

[5] G.A. Res. 3314 (XXIX), U.N. GAOR, 29th Sess., Supp. No. 31, at 142, U.N. Doc. A/9631 (1974).

It is against the backdrop of this fundamental illegitimacy that one has to see the human tragedy wrought by Indonesia's invasion. Whether its actions subsequent to the invasion in 1975 should best be characterized as genocide, as crimes against humanity, or as breaches by an occupying power of the Fourth Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Time of War - that is to say, war crimes - this has been a human tragedy of massive dimensions.

The massacre of 12 November last must also be seen against this backdrop. It was not a spontaneous incident as some Indonesian apologists would have us believe. It was part of a much wider pattern of repression over the past seventeen years. Whether the death toll was the 19 originally claimed by Indonesia or 100, or 200, it pales by comparison with the close to 200,000 that seems to be the more likely figure for the total depredations since the end of 1975.

Consider, moreover, the paltry reponse of the Indonesian legal system to these events. Some nine low level military personnel and one police officer were tried, convicted and sentenced for periods ranging from 8 to 18 months. Some relatively high level military personnel were sacked or transferred. At the same time, however, trials in Jakarta and Dili of some 15-20 Timorese - none of whom appears to have engaged in any violent acts - have resulted in such sentences as 10 and 15 years, and in one case, even life imprisonment. The Indonesian Defence Minister is quoted as defending the disparities in penalty on the ground that the crimes

committed by the Timorese were more serious. Serious by what standards? Those of an occupier. "This [separatist activity] is subversion, while the military officers were found guilty of ignoring instructions and acting beyond their authority," he is quoted as saying.[6]

One might have thought that killing peacable civilians by shooting into a crowd was called "homicide", "murder" even - why mince words - whether on the part of those actually doing the shooting or on the part of those in charge who either gave the orders or were utterly derelict in their control. Murder is a serious offence in most normal legal systems. But no one on the prosecution side appears to have made the necessary effort to bring charges commensurate with the reality of the events.

So far as the subversion charges are concerned, we have grave doubts whether the Fourth Geneva Convention and general international law permit the imposition of penalties for such a vague offence against those who are opposed to alien subjugation of their country and who seek only to exercise their right to self determination. The right to engage in peaceful assembly is, moreover, enshrined in international law, for example in Article 20 of the Universal Declaration of Human Rights. It is almost inconceivable that persons engaged in such an activity should be prosecuted, either under any anti-subversion law, or under any general provisions of the Indonesian criminal code. The trials, further, do not appear to have been conducted in accordance with

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[6] Reuters report, Jakarta, 10 July 1992.

normal democratic procedures.

One particularly troubling trial from the point of view of the United Nations is that of Francisco Miranda Branco who was sentenced to 15 years imprisonment for subversion.[7] The gravamen of the case against Mr Branco appears to have been that he was involved with an ad hoc body, the Comite Executivo, which was set up to handle the matter of contacting the mission of Portuguese Members of Parliament which was to have taken place in November. The terms of reference of that mission provided, in accordance with United Nations practice that:

> Para. 10. The Portuguese parliamentary delegation shall be free to meet whomever it wishes and anyone who wishes to meet the Portuguese parliamentary delegation will be allowed to do so. No action, including of a security nature, may be taken by the Indonesian authorities that could prejudice any potential or actual contacts. Individuals who meet the Portuguese parliamentary delegation shall not be made to suffer any adverse consequences as a result of those contacts.[8]

Organizing in advance to arrange contacts is plainly within the object and spirit of such a provision. The international community is well-served when brave people take promises like these seriously. One of the many challenges of the New Order is how to protect them when the government in question is not willing to live up to its undertakings.

The final matter to which I refer is the declaration issued by the Chair of the Commission on Human Rights and subscribed to by

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[7] UPI report, Jakarta, 23 June 1992.

[8] Annex to U.N. Doc. A/46/456 (1991).

Indonesian representatives,[9] calling for access to the territory of East Timor by international human rights organizations. The Indonesian Government has not responded to the Platform's letter sent in January 1992 to the Minister of Foreign Relations requesting that representatives of the Platform visit Dili and also observe the trials. In May, we urged the Secretary-General of the United Nations to intervene and use his influence in this matter. As far as we can tell, other NGOs have had the same problem. What must be done to have Indonesia respond?

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[9] Included verbatim in the Reoport of the Commission on Human Rights on its 48th Session.